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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/810,644

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Jean-Louis H. Gueret

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06/09/2006

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EXAMINER

WALCZAK, DAVID J

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/810,644

Applicant(s)

GUERET, JEAN-LOUIS H.

Examiner

David J. Walczak

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 3, 22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-21, 24-27 and 30-46 is/are rejected.
- 7) ☒ Claim(s) 28 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5, 6, 9, 11 of '04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election***

Applicant's election without traverse of Species IV in the reply filed on 4/17/06 is acknowledged. The Applicant contends that claims 1-21 and 23-46 are readable thereon, however, the elected embodiment does not include a porous structure which is saturated with product on the surface only (claim 3, it appears that in the elected embodiment, product passes through the porous structure and thereby cannot be on only the surface of the structure). Further, the structure defined in claim 23 is not disclosed as being present in the elected embodiment. Accordingly, claims 3, 22 and 23 are withdrawn from further consideration and claims 1, 2, 4-21 and 24-46 will be examined herein.

### ***Drawings***

The drawings are objected to because in Figure 2, reference character 24 is directed to the product P and not the piston, as indicated in paragraph 060. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and

where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency.

Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-21, 24-27 and 30-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Visser et al. (hereinafter Visser) in view of Kellett (as cited by Applicant). In regard to claim 1, Visser discloses a device for applying a "cosmetic product" R (as the Applicant has defined "cosmetic product" in paragraph 006 of the specification as a "care product" to be applied to the skin, the makeup remover R in the Visser device is considered a "cosmetic product") comprises of a receptacle 18, 14 configured to be closed so as to place the receptacle in sealed condition (see column 3, lines 44-47), a reservoir 14 for containing the product and a porous applicator 24

contained in the receptacle and loaded with product wherein the device can be unsealed to permit use of the applicator and resealed with the applicator in the receptacle. Although the Visser reference does not disclose that the applicator includes a biocidal agent thereon, attention is directed to the Kellett reference, which discloses another porous applicator for applying makeup remover wherein a biocidal agent is present on the applicator in order to eliminate the bioburden on the pad (see column 7, lines 19-33). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such a biocidal agent onto the applicator in the Visser device in order to eliminate the bioburden on the pad. In regard to claim 2, the biocidal agent must be "concentrated", at least to some degree. In regard to claim 4, the porous pad in Visser is considered to be hydrophilic, at least to some degree. In regard to claim 5, the biocidal agent disclosed by Kellett includes a bactericidal agent. In regard to claims 6, 7 and 12-18, although the Kellett reference does not disclose the specifically claimed characteristics of the biocidal agent, it is the Examiner's position that any suitable biocidal agent, including an agent having the claimed features, can be employed without effecting the overall operation of the device, especially since the Applicant has placed no criticality on the specific make-up of the agent. In regard to claim 8, the Kellett agent includes metallic salts. In regard to claims 9-11, the applicator 24 is made from a sponge material. Although the Visser reference does not disclose the specifically claimed type of material used to make the applicator, the Examiner takes official notice that such pads are commonly made from the claimed materials. Accordingly, it is the Examiner's position that it would have been obvious to one of

ordinary skill in the art at the time the invention was made that the claimed materials can be used to make the applicator, especially since the Applicant has not placed any criticality on the type of applicator used. In regard to claim 19, the Visser device permits reloading of the applicator with product from the reservoir. In regard to claim 20, the device is configured as claimed. In regard to claim 21, the device includes a closure element 18 to seal the receptacle. In regard to claim 24, the porous structure extends from the portion of the receptacle (during withdrawal). In regard to claim 25, the receptacle defines a housing 14 which receives the porous structure when the closure 18 is engaged. In regard to claim 26, the device includes a cosmetic product R. In regard to claim 27, the product is to be applied to the skin. In regard to claim 30, the method as claimed is inherent in the operation of the Visser device. In regard to claims 31-46, as discussed supra, the claimed structure is unpatentable over Visser in view of Kellett.

#### ***Allowable Subject Matter***


Claims 28 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
5/30/06